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No. 91-1317

In The

Supreme Court of the United States

October Term, 1991

ADAM CAB, INC. d/b/a ADAM CAB COMPANY,

Petitioner,

v.

MARCUS E. COLLINS, SR.,
STATE REVENUE COMMISSIONER,
STATE OF GEORGIA,

Respondent.

Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Georgia

BRIEF IN OPPOSITION FOR THE RESPONDENT

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QUESTION PRESENTED

Should this Court grant certiorari to consider the constitutionality of a state regulation that meets both procedural and substantive due process requirements?

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BRIEF IN OPPOSITION FOR THE RESPONDENT

Respondent in the above-styled action respectfully opposes the Petition for Writ of Certiorari to the Supreme Court of Georgia. None of the considerations justifying review on certiorari are met in this case. Accordingly, Respondent requests that the Petition be denied.

CITATION TO OPINION BELOW

The Order of the Superior Court of Chatham County, State of Georgia is not officially reported, but it is

reprinted in Petitioner's Appendix to Petition for Writ of Certiorari (See Petitioner's Appendix C). The Georgia Supreme Court's denial of Application for Discretionary Review is not officially reported, but it is reprinted in Petitioner's Appendix to Petition for Writ of Certiorari. (See Petitioner's Appendix D).

REGULATORY PROVISION AT ISSUE

Georgia Department of Revenue Regulation 560-12-2-.84(7)(b):

> Due to the likelihood that the State would otherwise lose tax funds due to the difficulty of policing the business operations of taxicab drivers because of the nature of the business, the lack of an office or regular place of business and the turnover of the drivers, headquarters operators and lessors of taxicabs shall collect the tax on fares for transportation of persons from their drivers as required above, and the term "headquarters operators" includes not only any person operating a headquarters for taxicabs and supervising or directing taxicab drivers, or receiving or relaying calls to cab driver members, but also any person or entity allowing use of the trade name of the headquarters or allowing any driver to hold himself out as being associated with the headquarters. The term "taxicab lessors" includes any person or entity leasing a vehicle to another person or entity for use as a taxicab.

STATEMENT OF JURISDICTION

This Court has adopted rules of guidance for determining whether a petition for writ of certiorari is to be granted. The portion of the rule specifically relating to the instant petition reads:

> A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor . . . The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons that will be considered . . . (b) when a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

Sup. Ct. R. 17.1. In the present case, the Georgia Supreme Court, the court of last resort in the State of Georgia, did not decide a federal question. It merely denied Adam Cab, Inc. d/b/a/ Adam Cab Company's (hereinafter "Adam Cab") application for discretionary review (See Petitioner's Appendix D). Accordingly, Adam Cab's argument that this Court should hear this case is without merit.

Adam Cab seems to argue that the Georgia Supreme Court's denial of Adam Cab's application for discretionary review decided a federal question because the denial finalized the order of the Superior Court of Chatham County, which ruled that Georgia Revenue Regulation 560-12-2-.84(7)(b) is constitutional. (See Order, Petitioner's Appendix C). Assuming *arguendo* that the Georgia Supreme Court's denial of Adam Cab's application

for discretionary review is a final decision, Adam Cab has still failed to show how the decision conflicts with another state court decision or a federal court of appeals decision.

Adam Cab cites cases from other states, including Minnesota, Wyoming, Florida and Alabama, as support for the existence of the conflict. However, as shown below, none of these cases addresses the constitutionality of a regulation similar to Georgia Revenue Regulation 560-12-2-.84(7)(b). Indeed, none of the cases involves issues similar to those in the instant case. Accordingly, Adam Cab's assertion of jurisdiction is without merit.

STATEMENT OF THE CASE[1]

Petitioner Adam Cab seeks review of the Chatham County Superior Court's Order dated October 29, 1991, which ruled that Revenue Regulation 560-12-2-.84(7)(b) is constitutional. The case had been remanded to the Chatham Superior Court to address the constitutional issues raised by Adam Cab, but not ruled upon by the trial court, in an earlier proceeding in which the Georgia

[1] The Georgia State Revenue Commissioner does not believe that a recitation of the facts is necessary. Should this Court grant Adam Cab's petition, the sole issue to be decided is the constitutionality of Georgia Revenue Regulation 560-12-2-.84(7)(b).

Supreme Court rendered a decision on other grounds. (See Petitioner's Appendix A).[2]

ARGUMENT AND CITATION OF AUTHORITY

Georgia Revenue Regulation 560-12-2-.84(7)(b) requires lessors and headquarters operators to collect sales taxes on fares collected for transportation of persons and to remit the taxes to the Georgia State Revenue Commissioner (hereinafter "the Commissioner"). Specifically, the role of the lessor and headquarters operator as agents of the State in the collection and remittance of sales tax is set forth as follows:

> Due to the likelihood that the State would otherwise lose tax funds due to the difficulty of policing the business operations of taxicab drivers because of the nature of the business, the lack of an office or regular place of business and the turnover of the drivers, headquarters operators and lessors of taxicabs shall collect the tax on fares for transportation of persons from their

[2] The Georgia Supreme Court has already ruled that the Commissioner was authorized, under Georgia Revenue Regulation 560-12-2-.84(7)(b), in placing the burden on Adam Cab to collect sales taxes from the taxi cab drivers to whom it leases taxi cabs and for whom it operates as a headquarters for remittance to the Commissioner. *Collins v. Adam Cab, Inc.*, 261 Ga. 305, 404 S.E.2d 560 (1991). However, Adam Cab also challenged the constitutionality of the regulation, and in division 2 of the opinion, the Georgia Supreme Court remanded the case to the trial court for resolution of the issue. *Collins v. Adam Cab, Inc.*, 261 Ga. at 307, 404 S.E.2d at 561.

> drivers as required above, and the term "headquarters operators" includes not only any person operating a headquarters for taxicabs and supervising or directing taxicab drivers, or receiving or relaying calls to cab driver members, but also any person or entity allowing use of the trade name of the headquarters or allowing any driver to hold himself out as being associated with the headquarters. The term "taxicab lessors" includes any person or entity leasing a vehicle to another person or entity for use as a taxicab.

Georgia Revenue Regulation 560-12-2-.84(7)(b). Adam Cab argues that the above-portion of the regulation unconstitutionally deprives taxicab companies of their property without due process of law. Specifically, Adam Cab contends that, under the regulation, Adam Cab is held liable for conduct of independent contractors over whom Adam Cab has no right or opportunity or authority to exercise control. The Commissioner maintains that a review of the relevant case law shows that the regulation at issue meets both procedural and substantive due process requirements.

With respect to procedural due process, it is well-established that the notice of assessment of the Commissioner issued to Adam Cab and the right to appeal, under O.C.G.A. § 48-2-59, to the Superior Court, provides for sufficient procedural due process. *Hodge v. Muscatine County, Iowa,* 196 U.S. 276 (1905); *Kennard v. State of Louisiana,* 92 U.S. 480 (1875).

With respect to substantive due process, federal case law indicates that the test of constitutionality is whether the method of regulation embodied in the statute bears a

reasonable relation to a constitutionally permissible object. *Ferguson v. Skrupa*, 372 U.S. 726 (1963).[3] In other words, the standard is one of "reasonable relationship." Applying this standard to the regulation at issue, it is clear that the regulation is valid.

Georgia Revenue Regulation 560-12-2-.84(7)(b), as well as Georgia's sales tax laws, is aimed at ensuring the collection and remittance of sales tax to the State – clearly a legitimate state interest. *See International Harvester Co. v. Wisconsin Dep't of Taxation*, 322 U.S. 435 (1944) (power to tax and collect taxes is included in states' inherent power of taxation). Regulation 560-12-2-.84(7)(b) seeks to achieve this legitimate objective, in an industry difficult to monitor, by imposing the burden of collecting and remitting sales tax on those persons who lease taxicabs to drivers or operate a headquarters for taxicab drivers. The Georgia Supreme Court noted the public policy and other concerns set forth in the regulation and the need to place the burden on the headquarters operators and for taxicab lessors to collect the tax from the drivers for remittance to the State Revenue Commissioner.[4] *Collins v. Adam Cab,*

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[3] This same test is used in the context of an equal protection challenge. *See Clark v. Jeter*, 486 U.S. 456 (1988). To the extent that Adam Cab may also be challenging the regulation on equal protection grounds, an equal protection challenge, like the due process challenge, is without merit.

[4] In the opinion, the Georgia Supreme Court also noted that a similar burden is placed by O.C.G.A. § 48-8-2(6)(G) on sellers of tangible personal property to persons for resale where there is a likelihood that the State will lose tax funds due to the difficulty of policing the business operations of the retailer. *Collins v. Adam Cab*, 261 Ga. at 306, 404 S.E.2d at 561.

Inc., 261 Ga. at 306, 404 S.E.2d at 561. Given that lessors of taxicabs and headquarters operators, such as Adam Cab, have daily contact with, and supervision over, taxicab drivers, it is certainly reasonable for them to be required to collect and to remit sales taxes to the State. *See International Harvester Co. v. Wisconsin Dep't of Taxation*, 322 U.S. at 443-44 (some practically effective device [is] necessary in order to enable the State to collect its tax); *Wells v. Malloy*, 402 F. Supp. 856 (D. Ver. 1975), *aff'd*, 538 F.2d 317 (2d Cir. 1976) (State tax collection procedure need only be fair and reasonable). Thus, the regulation is valid and Adam Cab's argument is without merit.

In support of its position, Adam Cab relies upon several cases in which Georgia appellate courts have held that a statute imposing liability based upon mere relationship between two parties is unconstitutional.[5]

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[5] In its brief, Adam Cab relies on *Frankel v. Cone*, 214 Ga. 733, 107 S.E.2d 819 (1959), which dealt with the constitutionality of a statute that imposed liability on a car owner for negligent acts caused by persons using the car for the benefit of the owner. The Court found that the statute violated due process by imposing liability on a car owner for injury caused by those driving the car without the owner's consent. Adam Cab also relies on *Corley v. Lewless*, 227 Ga. 745, 182 S.E.2d 766 (1971), which dealt with the constitutionality of a statute that imposed liability on a parent for willful and wanton acts of a minor child. The Court found that the statute violated due process by imposing liability on the parent solely on the basis of a parent-child relationship and even where the parent was entirely free from negligence or fault or had no knowledge of his child's tort. Adam Cab cites *Buchanan v. Heath*, 210 Ga. 410, 80 S.E.2d 393 (1954), which dealt with the constitutionality of a statute that required a railroad section foreman to pay

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However, these cases have nothing to do with the tax collection responsibility of taxicab headquarters operators and lessors. Further, these cases focus on liability absent consent or knowledge or based upon the existence of a relationship, such as parent/child. In contrast, in the instant case, Adam Cab is in the best position, due to its relationship, as either lessor or headquarters operator, to collect sales taxes from the drivers. Adam Cab can require the drivers, as a condition to the relationships, to collect the taxes from the passengers. If a specific driver refuses, Adam Cab could simply terminate that relationship.

Finally, Adam Cab seems to be arguing that the only way it can be held accountable for collection of sales taxes is to be in an employer/employee relationship with the taxicab drivers. Adam Cab relies upon *Cole v. Peachtree Cab Co.*, 121 Ga. App. 177, 173 S.E.2d 278 (1970). In *Cole*, the Georgia Supreme Court denied workers' compensation benefits to a taxicab driver, who rented a cab company's vehicle, because the cab driver was not an "employee" within workers' compensation law. In the case at bar, Adam Cab suggests that unless the cab driver is an employee as defined under workers' compensation law, Adam Cab should not be held liable for collection of

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damages to owners of stock that had been killed on his section if he failed to file a list of the marks and plans of the stock killed and irrespective of whether he had knowledge that the stock had been killed. The Court found that the statute violated due process because the section foreman was held liable automatically by virtue of this statute, regardless of whether the foreman was at fault.

tax. This argument is misplaced. It completely ignores the fact that Adam Cab enters into agreements with its drivers. Furthermore, the argument is a complete departure from Adam Cab's above argument that cites cases in which the courts refused to uphold statutes imposing liability based upon status or relationship, such as employer/employee. Citing the *Cole* decision, Adam Cab argues that unless there is an employer/employee relationship, Adam Cab should not be held liable for collection of taxes from its drivers.

Adam Cab claims that exercise of control over its drivers can exist only if its drivers are Adam Cab's employees. However, this Court has indicated that the label of "independent contractor" is not controlling in determining the constitutionality of a state's power to collect taxes from companies for which the independent contractors work. *Scripto v. Carson*, 362 U.S. 207 (1960) (the fact that salesmen working in taxing state are designated as "independent contractors" by foreign corporation is not controlling in determining if tax on corporation is constitutional).

As shown above, Adam Cab has presented inconsistent arguments to this Court. More importantly, Adam Cab has failed to show how being required to collect sales taxes is an unfair taking without due process.

Finally, Adam Cab claims that the Georgia Supreme Court has allowed to stand and remain in effect a judgment that is inconsistent with rulings of comparable matters in other states. Adam Cab cites several cases as support for its position, however, not one of these cases

addresses the constitutionally of a regulation similar to the one challenged by Adam Cab.

Adam Cab cites *Corbin v. Commissioner*, 240 N.W.2d 809 (Minn. 1976). In *Corbin*, the Minnesota Supreme Court decided that drivers/salesmen of a catering company were considered employees of the catering company and, thus, not required to remit sales taxes on snacks purchased from the catering company for resale. In *Fridlund Securities Company v. Minnesota Commissioner of Revenue*, 430 S.W.2d 154 (Minn. 1988), also cited, the Minnesota Supreme Court affirmed a lower court ruling that a taxpayer's metal sales were not "investment metal contracts," rather, they were taxable retail sales subject to Minnesota sales tax.

As support for its position, Adam Cab cites *Employment Security Commission of Wyoming v. Laramie Cabs*, 700 P.2d 399 (Wyo. 1985). Although *Laramie Cabs* involves cab drivers, the ruling is based upon the Court's interpretation of selected statutes in the Wyoming Employment Security law.

In *Noreiga v. Schnurmachar Holding, Inc.*, 528 So.2d 28 (Fla. 1988), the Court interpreted a Florida sales tax statute that imposes a tax on rental payments for real property, and the case involved a landlord/tenant dispute. Finally, in *Alabama v. Advertiser Company*, 337 So.2d 942 (Ala. 1976), the Court addressed whether sales tax was properly imposed, under a local ordinance, on the sale of newspapers from the publisher to its carriers. The ruling focuses on the interpretation of "wholesale sales" under Alabama sales tax law.

The five cases discussed above are cited by Adam Cab as supporting authority. However, none provides any authority to show that Georgia Revenue Regulation 560-12-2-.84(7)(b) results in an unfair taking without due process. Accordingly, Adam Cab's argument is without merit.

Given that Georgia Revenue Regulation 560-12-2-.84(7)(b) is reasonably related to a legitimate state objective and that Adam Cab has failed to demonstrate that the regulation lacks a reasonable basis, the regulation must be upheld. *See Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, *reh'g denied*, 411 U.S. 910 (1973) (there is a presumption of constitutionality in taxation classification scheme which can be overcome only by the most explicit demonstration that classification is a hostile and oppressive discrimination against particular persons and classes).

CONCLUSION

The Commissioner respectfully submits that this Court should deny Adam Cab's Petition for Writ of Certiorari.

Respectfully submitted,

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